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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
Application by Ameritech Michigan For Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of Michigan	)	CC Docket No. 97-137

AT&T'S OPPOSITION TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION

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TABLE OF CONTENTS

SUMMARY

The petitions for reconsideration and/or clarification filed by BellSouth, U S West and the NYDPS raise no facts or arguments that were not considered and rejected in the Commission's Order, and should be summarily denied under the existing standards pertaining to petitions for reconsideration. That is especially so with respect to petitioners' arguments based on the 8th Circuit's decision in Iowa Utiities Board v. FCC, which the Commission considered and addressed in the Order.

In all events, petitioners have identified no basis for reconsideration or clarification of the Order. Contrary to the suggestions of U S West and the NYDPS, the Administrative Procedure Act does not prohibit the Commission from applying its rulings in the Order to future applications pursuant to Section 271. Indeed, the Supreme Court has long recognized that an agency may use adjudicated cases to formulate rules and policy that will be applied in future cases, and the APA does not require the Commission to give public notice that it will follow its prior rulings in such cases. Nor does the APA mandate, as US West claims, that the Commission address "all" other issues raised by a Section 271 application when it has made a finding that the petitioning BOC has failed to satisfy at least one of the Act's requirements. The Commission fully discharges its obligation when it makes the findings necessary to grant or deny the application.

Petitioners' substantive claims fare no better. As the Commission correctly held, Congress required it -- not state commissions -- to determine in a Section 271 proceeding whether the prices charged by the petitioning BOC satisfy the requirements of the Act, and the 8th Circuit's decision did not -- and could not -- decide otherwise.

Rather, Iowa Utilities Board holds only that the Commission has no jurisdiction to issue rules that would bind the states in arbitration proceedings.

Finally, petitioners provide no basis to reconsider those aspects of the Commission's Order regarding OSS, performance standards, Section 272 and the public interest test.

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Pursuant to Section 1.106(g) of the Commission's Rules, AT&T Corp. ("AT&T") hereby opposes the petitions for reconsideration and clarification of the Commission's Memorandum Opinion and Order filed by BellSouth Corp. ("BellSouth"), U S West, Inc. ("U S West"), and the New York State Department of Public Service (the "NYDPS").[1]

INTRODUCTION

By its Order, the Commission has not merely discharged its statutory duty to decide within 90 days an application for interLATA authorization, but has provided the industry, state commissions and the Department of Justice with invaluable guidance on

[1] In the, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, CC Docket No. 97-137, FCC 97-298, released August 19, 1997 ("Order").

how the Regional Bell Operating Companies ("RBOCs") may secure the Commission's approval to provide in-region long distance service. The Commission's order will enhance the prospects for interLATA authorization for those RBOCs which are genuinely interested in opening local markets to competition, and correlatively increases the prospects for competitive exchange and exchange access service in markets heretofore monopolized by the RBOCs.

Two RBOCs and one state commission have filed petitions for reconsideration and clarification of the Commission's Order. As the Commission has held, "[r]econsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken" and would be appropriate only "where the petitioner shows either a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters."[2] For the most part, petitioners here raise no facts or arguments that were not raised and considered by the Commission during the course of this proceeding. Indeed, most of their requests are based on the 8th Circuit's decision in Iowa Utilities Board v. FCC.[3] But the Commission was well aware of the Court's decision when it adopted the Order, as

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2 In re Application of RadioSunGroup of Texas, Inc. 11 FCC Rcd 496 (1996); see also, Walton Broadcasting, Inc., 83 FCC 2d 440, 440 (1980)("[i]t is well settled that reconsideration will not be granted merely for the purpose of again debating matters which the Commission has deliberated upon and resolved").

3 Iowa Utilities Board v. Federal Communications Comm'n, ___F.3d___, (slip opinion issued July 18, 1997), 1997 U.S. App. Lexis 18183.

evidenced by the frequency of its citation in the Order.[4] Thus, the Commission has already considered and rejected petitioners' arguments that the rulings they challenge are inconsistent with the 8th Circuit's decision.

In all events, each aspect of the Commission's Order that is challenged by petitioners is amply supported if not compelled by the terms and purposes of Section 271 and related provisions of the Act, and is likewise consistent with other authority. The petitions should, therefore, be denied in their entirety.

I. PETITIONERS' PROCEDURAL ARGUMENTS ARE WITHOUT MERIT.

U S West and the NYDPS assert that the Commission did not follow proper procedures in conducting this proceeding and issuing its Order. In particular, U S West (5-7) claims that the Commission erred by failing to address all of the checklist and other issues raised by Ameritech's application, therefore forcing it and other RBOCs to file "repetitive" 271 applications to determine when they have satisfied Section 271. Contradictorily, US West (8-10) claims that the Commission erred by establishing standards that may be applied in the assessment of future applications. Joined by the NYDPS (2-3), U S West claims that the Commission violated the Administrative Procedure Act ("APA") by failing to give notice that its rulings on Ameritech's applications could affect the outcome of future applications. These procedural claims are meritless, as explained below.

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[4] Order, paras. 283, 284, 301, 333. Moreover, during the 90 days when Ameritech's application was pending, the parties had an ample opportunity to, and did, present to the Commission their views on the impact of Iowa Utilities Board on the issues raised by the application. In fact, at least 19 *ex parte* presentations discussing the 8th Circuit's Opinion were made to the Commission, covering issues such as pricing and shared transport.

U S West's complaints that the Commission's approach in the Order has created the need for an RBOC to file "successive," "sequential" or "repetitive" applications in order to gain interLATA authorization are baffling and wrong. The Commission did not here issue the type of narrow order about which U S West complains, but addressed in a detailed and comprehensive manner the key checklist and public interest issues that must be addressed in a Section 271 application, so that applicants would know what they need to show in order to receive interLATA authorization.

In all events, contrary to U S West's claim, nothing in Section 271 or the Administrative Procedure Act requires the Commission to address every issue raised by the applicant in denying a Section 271 application. Section 271(d)(3), by its terms, requires only that the Commission "issue a written determination approving or denying the authorization requested in the application." Where, as here, the decision is to deny the application, the Commission need not reach every issue raised by the applicant or other interested parties.[5] Indeed, given the complexity of a Section 271 application, and the possibility that the Commission may be confronted with multiple applications at any one time, it would be unreasonable to expect the Commission to do so.

The arguments of U S West and the NYDPS that the Commission cannot apply its rulings in the Order to future applications are likewise meritless. At bottom, these petitioners are claiming that the Commission may not decide issues of law or policy

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[5] U S West's citation to the provision in the APA requiring an agency to provide "findings and conclusions" on "all material issues of fact, law or discretion" does not support its position. If the Commission finds that the application fails to satisfy one item of the competitive checklist, for example, then other issues of checklist compliance are no longer "material".

in individual adjudications, but may do so only through a rulemaking proceeding. The law is clear, however, that an agency is free to decide general issues of law and policy in adjudications as well in rulemakings. Indeed, the Supreme Court has long recognized that "[a]djudicated cases may and do . . . serve as vehicles for the formulation of agency policies [and] generally provide a guide to action that the agency may be expected to take in future cases."[6] Contrary to the NYDPS, there is no requirement that the Commission give advance notice that decisions in adjudications could have such prospective effect. Indeed, in noting that its rulings in the Order will apply to future applications, the Commission did not violate the APA, but merely acknowledged that settled law requires an agency to follow its prior statements and holdings in subsequent proceedings, unless the agency has a reasoned basis to depart from them.[7]

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[6] NLRB v. Wyman-Gordon Co., 394 U.S. 759, 765-66 (1969)(plurality); see also, NLRB v. Bell Aerospace Co., 416 U.S. 267, 292-95 (1974); SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947). Further, the APA (5 U.S.C. 553(b)) permits an agency to issue policy statements without notice and comment, so long as the agency is later prepared to defend the merits of those policies in proceedings in which they are applied. See, Bechtel v. FCC, 10 F.3d 875, 878 (D.C. Cir. 1993).

[7] See, Motor Vehicle Manuf. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983); Hall v. McLaughlin, 864 F.2d 868, 872 (D.C. Cir. 1989).

II. THE ORDER DOES NOT "CONFUSE" OSS ACCESS OR "EXTEND" THE CHECKLIST.

A. Comparing BOC Retail Access To CLEC Access Offers The Only Meaningful Evidence Of Whether Parity Has Been Achieved.

Contending that the Order "confuses access to an RBOC's OSSs with access to the underlying checklist items that are obtained through those OSSs," (p.i) BellSouth speculates that the Order "may be read as impermissibly expanding an RBOC's obligation to offer nondiscriminatory access to its OSSs into an obligation to provide other network facilities and services (such as local loops or resold services, for example) in a manner the Commission deems competitively desirable." (p.2) BellSouth misses the point.

The Commission has the authority and duty to determine whether the petitioning RBOC has complied with all of its obligations under Section 251, not merely its obligations regarding OSSs. Both the OSSs and the underlying network elements, such as loops, are subject to the same requirement of nondiscriminatory access under §251(c)(3). Indeed, BellSouth (p.2 citation omitted) acknowledges as much, stating that "[b]ecause OSSs are network elements under section 251(c)(3), an RBOC must provide 'nondiscriminatory access to [those] network elements'" under the checklist. And, because the requirement of nondiscriminatory access applies to both the OSS and the underlying network element being provisioned, it is entirely appropriate to evaluate an RBOC's performance "by comparing performance for CLEC orders to performance for the RBOC's own retail orders all the way from order to completion . . . ." (BellSouth p.4)

Moreover, BellSouth's attempt to separate the OSS from the underlying network element or service reflects a fundamental misunderstanding of the nature of

CLEC orders, particularly orders for resold services and for existing combinations of unbundled network elements. The overwhelming majority of CLEC orders have merely requested the migration of the customer's account to the CLEC or a feature change on the account, both of which are accomplished by a software change within the RBOC's OSS. Likewise, the orders that CLECs such as AT&T seek to place for existing UNE combinations generally require only a software change using the RBOC's OSS. Thus, for the bulk of CLEC resale orders and UNE orders that comprise AT&T's preferred market entry strategy, the primary provisioning activity concerns OSS functions.

In all events, the requirement of nondiscriminatory access applies to both the OSS stage and any separate provisioning of the underlying element or service. Anything less than this type of end-to-end assessment raises a serious possibility of masking discrimination and obscuring an absence of competition.

Indeed, the inevitable dilution of the nondiscrimination requirement that would result if BellSouth's position were adopted is already evident in U S West's petition (p.12) for reconsideration, which abandons any pretense of parity and argues that compliance should turn on whether a competitor "is operational," which should be "measured at the most general level." According to U S West, (p.13, 14) "[s]o long as a BOC can demonstrate that it has *processes* in place that are *reasonably designed* to meet this standard [of substantially the same time and manner of service], there is no rational reason to deny it interLATA entry." But whether "processes" are "reasonably designed" to provide access does not answer the question whether nondiscriminatory access has in fact been achieved. As this Commission recognized, § 271 requires actual parity, not paper promises or, as U S West suggests, a conclusory review of processes that have

not been validated with results. That RBOCs such as BellSouth and U S West protest so strenuously against providing such results -- including their retail performance data -- only suggests how far they are from actually providing nondiscriminatory access.

Nor is there any merit to BellSouth's suggestion (p.5) that, as to certain unbundled network elements such as trunks, the appropriate measure of CLEC access is determined by the access BellSouth provides to interexchange carriers. A CLEC is entitled to order a trunk from BellSouth and have it provisioned in "substantially the same time and manner" that BellSouth provisions trunks to its retail customers or for its retail operations.[8] That BellSouth may not use the EXACT interface to provision its retail trunks is immaterial, as the Commission noted in the context of discussing Ameritech's claim that it did not use the pre-ordering interface. *See* Order 139 (footnotes omitted).[9]

BellSouth's claims (p.5) that the Commission's analysis could somehow be interpreted to require BOCs to provide access that is superior to what the RBOC itself receives (5), or impermissibly "extends" the competitive checklist, are likewise meritless. The Commission's Order proposes a straightforward standard for determining

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8 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. August 8, 1996) ¶518.

9 For example, the Commission noted that "[i]t is the activity of accessing a CSR that is analogous and, therefore, equivalent access is the appropriate standard for measuring nondiscriminatory access, even though competing carriers access CSRs via a gateway." *Id.* n.341. Similarly, BellSouth's ordering and provisioning of trunks for its retail customers is the appropriate analogue for the access it provides to CLECs for the ordering and provisioning of trunks, notwithstanding that CLECs use BellSouth's EXACT interface and BellSouth does not use that interface.

nondiscriminatory access: "We require, simply, that the RBOC provide the same access to competing carriers that it provides to itself." Order ¶ 143. This is the appropriate standard for determining whether the requirement of nondiscriminatory access has been met. As the Commission recognized, the best evidence by which to apply the standard is a comparison between the access the RBOC provides itself for its retail operations and that which it provides to CLECs. The Commission is not thereby extending the checklist, as US West suggests, but merely applying it.

B. The Order Properly Addresses Performance Standards.

BellSouth (p.6) also asks the Commission to "clarify on reconsideration that it will not deny § 271 approval on the basis that the RBOC's interconnection agreements do not contain specific performance standards for OSSs." In support of its request, BellSouth (p.5) cites paragraph 141 of the Order, which it characterizes as "forcing BOCs to include in their interconnection agreements performance standards that reflect the preferences of federal regulators, in order to obtain section 271 relief." But paragraph 141 contains no such statement.

Specifically, paragraph 141 does not mandate the inclusion of "Commission-preferred" performance standards in interconnection agreements. Rather, it discusses the various sources the Commission will consult in determining whether the RBOC is providing nondiscriminatory access. While noting that many OSS functions have retail analogues that provide the appropriate standard for judging nondiscriminatory access, paragraph 141 states that, in those cases where no retail analogue exists, the Commission will "examine whether specific performance standards exist for those functions." Among the sources the Commission will examine are performance standards

"adopted by the relevant state commission or agreed upon by the parties in an interconnection agreement . . .," which provide "more persuasive" evidence of commercial reasonableness than a standard unilaterally adopted by the RBOC. The Order then lists other sources of appropriate performance measures. *Id.*

Thus, while interconnection agreements are one source to which the Commission may look to determine appropriate performance standards, nothing in the Order suggests that an RBOC's failure to include such standards in the interconnection agreement will defeat a section 271 application. However, "[i]f a BOC chooses to rely *solely* on compliance with performance standards required by an interconnection agreement, the Commission must also find that those performance standards embody the statutorily-mandated nondiscrimination standard." Order ¶ 142 (emphasis added). The need for the Commission to make this finding does not intrude on the ability of parties and state commissions to negotiate and implement interconnection agreements, but is an appropriate exercise of the Commission's authority to determine that the petitioning RBOC has satisfied the requirements of Section 271.

III. THE COMMISSION'S STATEMENTS THAT IT WILL APPLY ITS INTERPRETATION OF THE ACT'S PRICING REQUIREMENTS IN DETERMINING SECTION 271 APPLICATIONS ARE NOT INCONSISTENT WITH IOWA UTILITIES BOARD, AND ARE OTHERWISE LAWFUL.

The NYDPS claims that the Eighth Circuit's holding in Iowa Utilities Board v. FCC that the FCC has no jurisdiction to issue pricing rules that will bind the states in arbitrating interconnection agreements necessarily forecloses application of those rules in proceedings under Section 271. This claim is wrong.

The Eighth Circuit vacated the FCC's TELRIC and other pricing rules on a narrow jurisdictional ground. While the Court held that § 251 and § 252 "apply" to intrastate services, the rules had been adopted for the purpose of prescribing rules of decision in the arbitration proceedings over which state commissions have jurisdiction, and the Court held that § 251(d) (and §§ 4(i), 201(b), and 303(r)) do not unambiguously give the FCC "jurisdiction" to adopt substantive pricing standards that would bind states in conducting these proceedings and overcome the "fence" of § 2(b). The court also relied on the fact that while § 252(c)(1) requires states to comply with FCC regulations in conducting arbitrations, § 252(c)(2) provides that the states are to establish rates based on the standards of § 252(d), and neither §252(c) nor § 252(d) make any mention of FCC regulations.

For this reason, the Eighth Circuit thought Congress had not unambiguously given the FCC jurisdiction to adopt pricing rules that bind states, but could have intended that states conclude arbitrations on the basis of their own interpretations of the federal pricing requirements of § 252(d) and § 251(c). Under the Eighth Circuit's view, the only entities with authority to assure that states apply the interpretation of the federal pricing requirements that best effectuate their terms and purposes are the federal courts that review the agreements under § 252(e)(6). Thus, if states do not follow the Commission's interpretation of the Act's pricing requirements, their decisions will be appealed to the appropriate federal district court, and then to the appropriate federal court of appeals, and ultimately to the United States Supreme Court – and it is then and only then that there can be a single definitive national interpretation of the Act's pricing requirements.

In the interim, the Eighth Circuit's holding has no effect on the Commission's authority to enforce its view of § 251's and § 252's pricing requirements in the proceedings in which the Commission unquestionably has jurisdiction to enforce these federal requirements, such as § 271.

Specifically, under § 271, an RBOC cannot obtain long distance authority unless the Commission finds that the RBOC is, inter alia, providing (1) "interconnection in accordance with the requirements of § 251(c)(2) and § 252(d)(1)" (§ 271(c)(2)(B)(i)); (2) access to unbundled network elements "in accordance with the requirements of § 251(c)(3) and § 252(d)(1)" (§ 271(c)(2)(B)(ii)); and (3) resale "in accordance with the requirements of § 251(c)(4) and § 252(d)(3)" (§ 271(c)(2)(B)(xiv)). Accordingly, to conduct adjudications under § 271, the Commission must independently determine the meaning of the pricing requirements of § 251(c) and 252(d) and determine whether RBOC is now pricing, and will hereafter price, interconnections, access, and wholesale services for resale in accord with those requirements. Thus, while the pricing rules have been vacated on procedural grounds, the Commission's interpretations of the Act's pricing requirements must be applied in § 271 proceedings unless and until the Commission changes its interpretation or that interpretation were definitively held to be invalid.

Moreover, NYDPS' (p.3) reliance on the provision in § 271 requiring the Commission to "consult" with State Commission's in reviewing a BOC's application is misplaced. The Act expressly declines to require the Commission to give any deference to the state's determinations when the FCC conducts its adjudication under § 271. Compare § 271(d)(2)(A) (requiring substantial weight to Department of Justice's recommendation) with § 271(d)(2)(B) (requiring no specified weight to state determination). The

Commission is directed to "consult" with the State Commission "in order to verify the compliance" of the RBOC with the competitive checklist, see 47 U.S.C. § 271(d)(2)(B), but, as that language makes clear, the responsibility to "verify the compliance" is assigned to the FCC, not to the State Commissions with which it consults prior to discharging that responsibility. Indeed, the Commission also has the authority under § 271(d)(6) to revoke an RBOC's long-distance authority after such authority has been granted if it determines that the RBOC has ceased to meet any of the required conditions, including the checklist, and there is no provision for consultation with State Commissions in proceedings under Section 271(d)(6).

All these features of § 271 simply reflect the reality that the Commission is not performing the state's function of determining rates for interconnection, access, and resale, or the federal district court's function of reviewing approved interconnection agreements, when it acts upon a § 271 application. Rather, the Commission is doing something else – determining if the preconditions for removal of the long distance restriction have been satisfied – and there is no basis for the Commission to defer to other bodies in making this determination. At the same time, if the result of the denial of a § 271 application were the adoption of rates that better advance the Act's goals of fostering competition, that would promote the Act's fundamental objectives, not retard them. Indeed, that is one of the reasons that the Act requires that there be a Commission determination of compliance with the competitive checklist before there can be long distance authority.

Finally, the Act gives the Commission the authority (on public interest grounds) to deny applications even when the other prerequisites are satisfied. That

underscores that there is no substance to any claim that the Commission should defer to other bodies' determination that the rates satisfy the requirements of the Act for any purpose.

IV. THE COMMISSION'S PUBLIC INTEREST ANALYSIS DOES NOT EXPAND THE CHECKLIST OR RAISE AN IMPERMISSIBLE HURDLE TO SECTION 271 AUTHORIZATION.

A. Local Market Competition Criteria.

In their petitions, BellSouth (10-13) and U S West (17) contend that the Commission may not consider local competition as part of its assessment of the public interest. In the Order, however, the Commission correctly concluded that § 271 requires RBOCs "to demonstrate that they have opened their local markets to competition *before* they are authorized to provide in-region long distance services. Section 271 thus creates a critically important incentive for BOCs to cooperate in introducing competition in their historically monopolized local markets." (Order ¶ 14). BellSouth and U S West merely repeat arguments that the Commission considered and rejected in the Order. Their petitions, therefore, should be summarily denied.

The ultimate inquiry under a §271 "public interest" analysis must be whether interLATA authorization will promote competition. Under the plain language and legislative history of §271, this core question cannot be answered merely by considering whether the petitioning BOC has complied with the competitive checklist.

Section 271(d)(3)(C) directs the Commission to determine whether "the requested authorization is consistent with the public interest and necessity." It is settled

law that the impact of competition must be considered as part of the inquiry.[10] Indeed, give that the RBOCs' ability to leverate their local service and exchange access monopolies lies at the heart of the ongoing interLATA restriction, it would be absurd to lift that restriction without first determining whether the condition that necessitated it persists.

Moreover, the legislative history of the Act's public interest requirement makes it clear that compliance with the competitive checklist is no substitute for an examination of the status of local competition. During deliberations over the Act, the Senate tabled -- by a vote of 68 to 31 -- an amendment providing that "[f]ull implementation of the [competitive] checklist . . . shall be deemed in full satisfaction of the public interest, convenience, and necessity requirement."[11] Congress's decision to keep the "public interest" test as a separate and independent requirement establishes that satisfaction of the checklist cannot be deemed sufficient by itself to justify RBOC long distance entry.

B. "Pick And Choose".

BellSouth (pp.15-16) claims that the Commission has used the public interest test to extend the competitive checklist by re-adopting the "pick and choose" rule, and has violated the Eighth Circuit's decision to vacate that rule. BellSouth's claim is based on a misreading of both the Order and Iowa Utilities Board.

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10 *Denver & Rio Grande Western R.R. Co. v. United States*, 387 U.S. 485, 492 (1967); *United States v. FCC*, 652 F.2d 72, 88 (D.C. Cir 1980).

11 141 Cong. Rec. S7960, S7971 (daily ed. June 8, 1995).

First, Iowa Utilities Board did not and could not construe the Commission's authority to consider the availability to other carriers of individual aspects of interconnection agreements as one of many factors in the public interest inquiry under § 251. Rather, the Eighth Circuit decided only that § 252(i) does not require incumbent LECs to allow other carriers to "pick and choose" components of an agreement.

Second, in its Order, the Commission did not re-adopt the "pick and choose" rule for purposes of § 252(i), or state that it would deny a Section 271 application filed by a BOC that did not comply with that rule. Rather, the Commission merely stated that it would consider the availability to other carriers of components of an agreement as simply one factor in its public interest analysis. That is entirely appropriate, for as the Commission recognized, the ability of a carrier to enter the market by availing itself of particular components of an existing agreement increases the options available to new entrants, and is further evidence that the local exchange is open to competition.

V. THE COMMISSION'S RULINGS ON ISSUES RAISED UNDER SECTION 272 ARE CONSISTENT WITH THE ACT AND SHOULD NOT BE RECONSIDERED.

A. The Commission Properly Construed its Duty to Assure Compliance with the Act's Separate Subsidiary Requirement.

BellSouth (pp.6-7) claims "a BOC need not establish [a § 272] affiliate until it exercises interLATA authority." On this basis, it contends the Commission cannot require full § 272 compliance before § 271 authorization. BellSouth is again wrong.

The Commission made clear that, in considering compliance with § 272 it must make "in essence a predictive judgment"[12] to assess the likelihood that an RBOC will comply with § 272 in the future. But to do so , and ensure that an RBOC's affiliate will not enter the interLATA market with illicit advantages, it must have evidence of on-going compliance with § 272. Otherwise, an RBOC could cross-subsidize its interLATA business and discriminate against all competitors with impunity before entry. The Commission correctly determined that it cannot fulfill its statutory obligations based on mere assurances of future compliance, but needs a sufficient evidentiary basis.[13] The Order thus properly requires a petitioning RBOC to disclose its pre-application transactions with its affiliate.

B. The Commission's Statements Regarding Ameritech's Marketing Script Guidance Are Consistent with Both the Act and Commission Precedent.

BellSouth (p.9) claims for itself and other RBOCs a statutory right "to bring its affiliate's services to the customer's attention in a preferential fashion." Furthermore, BellSouth (p.8) claims that any requirement to include the RBOC's interLATA affiliate in a random list would "nullify the BOC's statutory joint marketing right." Indeed, BellSouth asserts that the Commission has concluded in its Non-

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12 Order at ¶ 347.

13 Because an RBOC may not offer in-region interLATA service until its affiliate is up and running, the only possible rationale for delaying the establishment of its affiliate would be the RBOC's desire to avoid Commission scrutiny of asset transfers and other transactions.

Accounting Safeguards Order that an RBOC need not provide a list of alternative interexchange carriers. Based on these premises, BellSouth asks the Commission to reconsider its statement that it might reject a § 271 application if the RBOC's customer representative mentions only its affiliate's interLATA service absent an affirmative request by the customer for the names of other interexchange carriers.

Contrary to BellSouth's suggestion, the Order is not inconsistent with the Commission's prior rulings in its Non-Accounting Safeguards Order, or its right to engage in joint marketing. By referring to the NYNEX *ex parte*, the Commission was not endorsing any specific proposal regarding the sequence for complying with equal access obligations and then engaging in marketing efforts, but merely confirmed that marketing to inbound callers is permitted. As the Commission made clear marketing to inbound callers is permitted only if the RBOC also informs such customers of their right to select the interLATA carrier of their choice.[14] Moreover, the Commission expressly noted that it had not "adopted any regulations to supersede" existing equal access regulations, which do not permit the identification of only one interexchange carrier.

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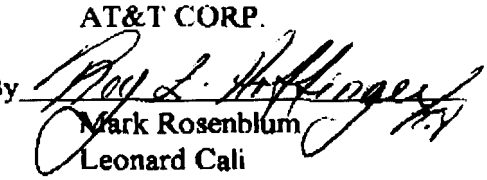
[14] Non-Accounting Safeguards Order, para. 292.

CONCLUSION

For the reasons stated above, the petitions for reconsideration and clarification of the Commission's August 19, 1997 Order should be denied.

Respectfully submitted,

AT&T CORP.

By 

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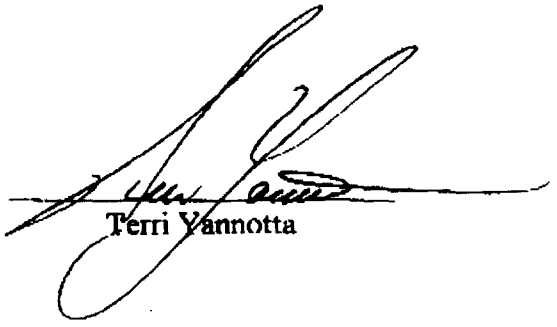
October 9, 1997

CERTIFICATE OF SERVICE

I, Terri Yannotta do hereby certify that on this 9th day of October, 1997, a copy of the foregoing "AT&T Opposition To Petitions For Reconsideration and Clarification" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.



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